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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,865	03/18/2004	Philippe Jerome Didier Riviere	88265-7344	5444
29157	7590	12/11/2009		
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER CHAWLA, JYOTI	
			ART UNIT 1794	PAPER NUMBER
			NOTIFICATION DATE 12/11/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/802,865	Applicant(s) RIVIERE ET AL.	
	Examiner JYOTI CHAWLA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-27 is/are pending in the application.
- 4a) Of the above claim(s) 17-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's submission filed on 8/4/2009 has been entered as compliant. Claims 1, 5 and 16 have been amended in the current response. Claims 1-5, 7-27 are pending, claims 17-27 have been withdrawn from consideration for being directed to non-elected invention, claims 1-5 and 7-16 are examined in the current application.

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejection of claims 5 and 16 under 35 U.S.C. 112, second paragraph, for being indefinite for failing to particularly point out and distinctly claim the subject matter made in the previous office action dated 04/06/2009 have been withdrawn based on applicants' amendments to claims dated 8/4/2009.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

(A) Claims 1-5, 9-13 and 15-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Whelan et al., (US 5,084,295), hereinafter Whelan, in view of Wolfmeyer (US 3,335,013), hereinafter Wolfmeyer.

References and rejections are incorporated herein and as cited in the previous office action dated 4/6/2009.

Applicants' amendment to claim 1, reciting "sweetening agent mixture comprises glucose and a mixture of glucose polymers" does not lend patentable distinction to claims over Whelan and Wolfmeyer as Whelan teaches of glucose, maltose and corn syrups among suitable nutritive sweeteners (for example, see Column 12, lines 5-11). Wolfmeyer also discloses of "starch hydrolysate sirups, such as corn syrups" (column 1, lines 15-20) preferably have DE values between DE 24 to DE 64 (Column 3, lines 15-20) and includes monosaccharide and disaccharides (for example, see Column 3, lines 1-4 and 35-50). Wolfmeyer also discloses analyses of typical starch hydrolysate syrups, which include dextrose (i.e., glucose), maltose (i.e., glucose polymer with $n=2$) and trisaccharides, tetrasaccharides, pentasaccharides, hexasaccharides, heptasaccharides and higher (see Table 1, Column 3, Wolfmeyer). It is noted that starch hydrolysate syrups or "corn sirups" or corn syrups, as taught by both references inherently include glucose also known as dextrose, maltose (a glucose polysaccharide with $n=2$) and maltotriose (a glucose polymer with $n=3$) and higher oligosaccharides, as evidenced by Handbook of Industrial Chemistry, pages 188-189 (NPL reference of record). The evidentiary reference also provides relative proportions of glucose and its polymers based on degree of hydrolysis of starch syrup or DE value on page 189. Since starch syrups or corn syrups contain glucose/dextrose and a mixture of glucose polymers and both Whelan and Wolfmeyer teach of corn syrups, therefore, the new limitation of "mixture of glucose polymers" as recited is taught by Whelan as well as by Wolfmeyer. Amendments to claims 5 and 16 addressed the 112 (second paragraph) rejections and did not add any new limitations to the claim as recited. Thus claims 5 and 16 remain rejected for reasons of record

(B) Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whelan and Wolfmeyer as applied to claims 1 above, and further in view of NPL reference Wiley's Encyclopedia of Food Science and Technology, 2nd Edition (pages 2242 & 2271), hereinafter Wiley's.

Whelan in view of Wolfmeyer has been applied to claims 1-5, 9-13, 15 -16 above. References and rejections are incorporated herein and as cited in the previous office action dated 4/6/2009.

(C) Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whelan and Wolfmeyer as applied to claim 1 above, and further in view of Cole (US 4,452,824), hereinafter Cole.

Whelan in view of Wolfmeyer has been applied to claims 1-5, 9-13, and 15-16 above. References and rejections are incorporated herein and as cited in the previous office action dated 4/6/2009.

(D) Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whelan and Wolfmeyer as applied to claims 1, 12 and 13 above, and further in view of Harju (US 4,855,056), hereinafter Harju.

Whelan in view of Wolfmeyer has been applied to claims 1-5, 9-13, and 15-16 above. References and rejections are incorporated herein and as cited in the previous office action dated 4/6/2009.

Response to Arguments

Applicant's arguments filed 8/4/2009, regarding the rejection of claims 1-5, 7-16 have been fully considered but have not been found persuasive.

Art Unit: 1794

i) Applicants' argue that Whelan does not teach the claimed invention (Remarks, page 11, lines 6-14). Applicants' seem to argue that Whelan teaches "a single glucose polymer, maltose, rather than a mixture of glucose polymers" (Remarks, page 11, lines 13-14). Applicants' also present the same argument on page 11, last paragraph, page 12, paragraphs 1 and 4 and also on pages 13 and 14 in relation to rejection of claims 7, 8 and 14. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, Whelan teaches of glucose, maltose and corn syrups among suitable nutritive sweeteners (for example, see Column 12, lines 5-11). Wolfmeyer also discloses of "starch hydrolysate sirups, such as corn syrups" (column 1, lines 15-20) preferably have DE values between DE 24 to DE 64 (Column 3, lines 15-20), as discussed in the office action above. As evidenced by Handbook of Industrial Chemistry, pages 188-189 (NPL reference of record), starch hydrolysate syrups or "corn sirups" or corn syrups, include glucose also known as dextrose, maltose (a glucose polysaccharide with $n=2$) and maltotriose (a glucose polymer with $n=3$) and higher oligosaccharides, as evidenced by Handbook of Industrial Chemistry, pages 188-189 (NPL reference of record). Since starch syrups or corn syrups contain glucose/dextrose and a mixture of glucose polymers and both Whelan and Wolfmeyer teach of corn syrups, therefore, the new limitation of "mixture of glucose polymers" as recited is taught by references of record.

ii) Applicants' remark "because the frozen dessert contains a mixture of glucose polymers, the quantity of fat introduced into the composition can be advantageously be reduced without affecting the malleability of the dessert product" (remarks, page 10, last paragraph) has not been found persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the quantity of fat introduced into the composition can be advantageously be reduced without affecting the malleability of the

dessert product”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claims 1-5, 7-16 remain rejected for the reasons of record.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/
Examiner
Art Unit 1794

/Keith D. Hendricks/

Supervisory Patent Examiner, Art Unit 1794